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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966.

No. 1272

GREEN STREET ASSOCIATION, JAMES BATTS, VELMA BATTS, AND ALL OTHER PLAINTIFFS NAMED IN THE COMPLAINT,

Petitioners,

vs.

RICHARD J. DALEY, CITY OF CHICAGO, DEPARTMENT OF URBAN RENEWAL OF THE CITY OF CHICAGO, LEWIS W. HILL, ROBERT C. WEAVER, WILLIAM L. SLAYTON AND A. DEAN SWARTZEL,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The Petitioners, Green Street Association, James Batts, Velma Batts, and all other plaintiffs named in the complaint, pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered on January 25, 1967.

OPINIONS BELOW.

The opinion of the Court of Appeals is not reported, but is reproduced in Appendix A to this Petition, pages 17-30, *infra*. The Memorandum and Order of the District Court, by which the cause was dismissed, is reported at 250 F. Supp. 139 (N. D. Ill. 1966) and is contained in the Appendix to Plaintiffs-Appellants' Brief filed in the Court of Appeals, at pages 47-61; nine additional copies of the Appendix have been filed with this Court, as permitted by Rule 21, paragraph 4, of this Court's Rules.

JURISDICTION.

The judgment of the Court of Appeals was entered on January 25, 1967. This Court has jurisdiction to review the judgment by a Writ of Certiorari under 28 U. S. C. Section 1254(1), 62 Stat. 928.

QUESTIONS PRESENTED.

Petitioners brought suit in the United States District Court for the Northern District of Illinois to forestall further efforts by defendants to carry out an urban renewal project in the Central Englewood section of Chicago. The project area is not a slum area; it is rather what has been designated by Respondent City of Chicago as a conservation area. Petitioners alleged that the conservation plan, which was designed to bring about the rehabilitation of a shopping area—thus requiring the taking of many standard Negro dwellings primarily to provide parking space—was the product of a conspiracy by private commercial interests and certain public officials to violate the civil rights of Petitioners and to subject them to discrimination under a program receiving Federal financial assistance, contrary to the Civil Rights Acts of 1964 and 1866. The suit was dismissed

by the District Court on the ground that it failed to raise substantial Federal questions and that Petitioners had an adequate remedy at law in the condemnation suits to be filed in the Illinois State courts.

The Court of Appeals affirmed the dismissal, holding that challenges to urban renewal programs are matters to be litigated in condemnation proceedings, provided only that the taking is ostensibly for a public purpose, even though violations of Federally-guaranteed rights are claimed; it further held that Count IV fails to state a claim under Section 601 upon which relief can be granted.

The questions presented are—

1. Does a complaint which charges public officials with planning to create a no-Negro buffer zone between a shopping area and the surrounding Negro residential community by means of an urban renewal project state a cause of action under the Civil Rights Acts, insofar as it alleges that the plan is the product of a conspiracy to deprive Negro citizens of their right to own and lease real property?

2. When Negro citizens bring a claim in the Federal courts under the Civil Rights Acts alleging violations of Federally-guaranteed rights, are they barred from litigating their claim in a Federal forum merely because it relates to an urban renewal project in which condemnation proceedings in state courts are contemplated?

3. Do Negro citizens who allege that an urban renewal relocation plan will subject them to racial discrimination under a program receiving Federal financial assistance have standing to complain of that plan under Section 601 of the Civil Rights Act of 1964?

STATUTES INVOLVED.

The statutes involved are Sections 1982 and 1983 of Title 42, U. S. Code (Civil Rights Acts), and Section 601 of the Civil Rights Act of 1964 (42 U. S. C. § 2000(d)). The case also involves Section 105(c), as amended, of the Housing Act of 1949 (42 U. S. C. § 1455(c)). These statutes are reprinted in Appendix B hereto, pages 31-33, *infra*.

STATEMENT OF THE CASE.

This suit was filed by approximately 127 individual Negroes who own or lease property in the Central Englewood neighborhood of Chicago and by the Green Street Association, a not-for-profit corporation organized to protect the interests of residents of the area.

In Count I of the complaint, Petitioners sought to have the Central Englewood conservation plan,[1] which the Chicago City Council approved in 1964, declared invalid on the ground that it was the result of an illegal conspiracy between private commercial interests and certain public officials.[2] The basic facts pleaded in Count I are as follows:

The conservation plan for the Central Englewood area calls for the acquisition and demolition of about 600 dwelling units, eighty-five percent of which are owned or occupied by Negroes. After clearance, the land is to be used for predominantly non-residential purposes—mainly as commercial parking space. According to the City of Chicago's

1. The Central Englewood Conservation area consists of approximately seventy-five acres. Twenty-two acres of the project area contain residential property and twenty-seven acres are devoted to commercial and other non-residential uses.

2. In Count I the Defendants named were Mayor Richard J. Daley, the City of Chicago, the Department of Urban Renewal of the City of Chicago, and Lewis W. Hill, Commissioner of that Department. Additional Defendants named in Count IV were Robert C. Weaver, William L. Slayton, A. Dean Swartzel, Federal officials in the Department of Housing and Urban Development.

figures, approximately four-fifths of the homes to be cleared are classified by the 1960 United States Census of Housing as meeting the City of Chicago's definition of "standard" condition. Thus these dwellings are not substandard or slums. Existing parking facilities in the conservation area are already excessive according to surveys made by the City's Bureau of Streets and Parking; on an average, fifty-five percent of available spaces are vacant on heavy shopping days.

Beginning in 1950 Negroes began to move into the Central Englewood area. Coincidentally, the volume of commercial sales transacted in the area began to decline. About 1953, certain commercial interests in Central Englewood engaged consultants to devise a plan to counteract the increased Negro concentration and to revive the commercial trade. The plan which was formulated involved the creation of a no-Negro "buffer zone" of parking lots and streets which would separate the shopping facilities from the surrounding Negro residences, thereby making the shopping area more attractive to white patrons with their presumably greater buying power. Sometime after the inception of this conspiracy to accomplish Negro clearance, local officials of the City were induced to become parties to it and to adopt and promote the plan as a non-residential urban renewal project under the Federal Housing Act, having as its ostensible purpose the rehabilitation of an aging urban shopping center.[3]

The theory of Count I is that the Central Englewood plan is not a good faith urban renewal plan for the conservation of the area, but rather is a scheme or ruse devised by commercial interests and local government officials to effect Negro clearance under the guise of urban renewal, with

3. A Federal planning grant of $250,000.00 was obtained, and ultimately a $13,000,000.00 program was approved for the clearance and redevelopment of Central Englewood.

the use of both Federal and local tax funds. Petitioners charge that the defendants thus conspired to deprive Petitioners, and other Negro citizens similarly situated, of their right to own, hold, lease and enjoy property in violation of the Civil Rights Acts and the United States Constitution.

In Count IV Petitioners alleged as follows:

In the City of Chicago the vast majority of Negroes are forced to live in fairly well-defined areas frequently referred to as "ghettos." As a consequence, Chicago is one of the most segregated major cities in the United States.[4]

Under the Federal Housing Act, the City is required to provide a "feasible method" of relocating persons to be displaced from an urban renewal area and to carry out a relocation assistance program for such persons. The relocation plan for the Central Englewood Urban Renewal Project expressly provides for relocation in conformity with segregated residential patterns in the City of Chicago. The plan, by numerous charts and graphs, explicitly breaks down relocation housing facilities into those units available to white persons and those available to Negroes. Defendants' plan thus proposes to relocate Petitioners and other displacees according to race, a policy and practice which the City of Chicago has in fact adhered to in prior urban renewal projects.

The theory of Count IV is that the relocation plan for Central Englewood subjects Petitioners to discrimination under a "program and activity receiving Federal financial assistance." Petitioners charge that the plan thus violates Section 601 of the Civil Rights Act of 1964 and

4. Although Negroes comprise some twenty-three percent of the City's population, ninety-three percent of the Negro population would have to move into blocks occupied entirely by white residents to produce an integrated residential pattern. (Paragraph 13, Count IV, Complaint.)

their rights under the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

THE DECISION OF THE COURT OF APPEALS.

In affirming the order of dismissal, the Court of Appeals ruled, with respect to Count I, that even though violations of Federally-guaranteed rights are claimed, "cases presenting challenges to urban renewal programs are matters for the condemnation proceedings in the state courts if the taking is ostensibly for a public purpose." The Court of Appeals found that, even though the claim of violation of provisions of the Civil Rights Acts seemed to be controlled by its decision in *Progress Development Corp.* v. *Mitchell,* 286 F. 2d 222 (7th Cir. 1961), there were significant differences, both in terms of the "facts alleged" and in terms of the "practical and efficient administration of urban renewal programs." Specifically, the Court appears to have made the following distinctions:

1. In *Progress Development* it was alleged that village officials instituted condemnation suits "immediately" after the disclosure that a proposed subdivision was to offer integrated housing; it was also alleged that the officials were not condemning plaintiffs' property for a public purpose but solely to acquire their property in violation of their civil rights.[5] These allegations, according to the Court of Appeals, indicated that the *Progress Development* complaint essentially involved civil rights rather than eminent domain.

2. Petitioners in the present case do not contend that their properties, when acquired, would be devoted to other than a public use, nor do they assert that the project is designed "solely" to deprive them of their right to own

5. As in the present case, plaintiffs' property was ostensibly being acquired for a public purpose.

and occupy property. The Court of Appeals thus concluded that Petitioners are challenging only the "motives" of Defendants. Consequently, according to the Court, the complaint does not state a claim comparable to that alleged in *Progress Development* and is nothing more than an attempt to obtain Federal judicial review of a program of urban renewal prior to the institution of eminent domain proceedings.

3. Only the *purpose* for which eminent domain is instituted—and not the *motives for its exercise*—may be questioned, and the purpose may be more appropriately determined in state condemnation proceedings.

With respect to Count IV, the Court of Appeals held that Section 601 of the Civil Rights Act of 1964 does not confer standing on Petitioners to sue any of the Federal defendants. If individual suits were permitted, the Court ruled, the administrative procedure set forth in Sections 602 and 603 would be by-passed. The Court of Appeals further held that, since the relocation provisions of the plan *does not force or compel* displacees from urban renewal sites to locate in segregated areas, but merely "recognizes" the segregated residential pattern of Chicago, Petitioners failed to state a cause of action against the local public officials upon which relief could be granted.

REASONS FOR GRANTING THE WRIT.

I.

The Decision of the Court of Appeals Is in Conflict With the Views of This Court With Respect to the Right to a Federal Forum When Civil Rights Violations Are Pleaded.

This Court has held that persons claiming violations of the Federal Civil Rights Acts may seek relief in Federal courts even though state law also provides a remedy. *Monroe* v. *Pape,* 365 U. S. 167 (1961); *McNeese* v. *Board of Education,* 373 U. S. 668 (1963). In reviewing the purpose of the Civil Rights Acts, and particularly Section 1983 (42 U. S. C. 1983), in *McNeese,* this Court pointed out that, while the purposes of the section were several, one reason for its passage was to provide a Federal remedy in the Federal courts *supplementary* to any remedy a state might grant. 373 U. S. 668, 672. In holding that exhaustion of state remedies was not a prerequisite to maintaining a suit under Section 1983 to eradicate segregation in an Illinois public school, this Court concluded that the purposes of the Act would be defeated if "assertion of a federal claim in a federal court must await an attempt to vindicate the same claim in a state court." 373 U. S. 668, 671.

In *Monroe,* where an illegal search and arrest was alleged, this Court again stated (365 U. S. 167, 183):

> Hence the fact that Illinois by its constitution and laws outlaws unreasonable searches and seizures is no barrier to the present suit in the federal court.

Thus, in *Monroe* and *McNeese,* the existence of state remedies did not foreclose the rights of plaintiffs to seek equitable relief in a Federal tribunal. In the present case, according to the Court of Appeals, the state remedy—defending against eminent domain proceedings—must be pursued first. On this view, cases involving urban renewal programs, even though violations of Federally-guaranteed rights are claimed, are held to be matters for the condemnation proceedings in the state courts; and, presumably, only after the state proceedings are concluded may one seek relief in the Federal courts if civil rights claims have not been protected.

In its own decision in *Progress Development Corp.* v. *Mitchell,* 286 F. 2d 222 (7th Cir. 1961), the Court of Appeals described the *pending* state condemnation action as a proceeding to "determine the question of the statutory taking of plaintiffs' land and the fixing of just compensation therefor" (286 F. 2d 222, 232). The inference is clear that the Court did not equate state condemnation proceedings with any Federal cause of action for the vindication of Federal Civil Rights. It found "as a matter of law" that such a state court suit could not serve as a bar to the exercise of Federal equity jurisdiction. In the present case, however, the right of Petitioners to resist condemnation suits is held to constitute a complete bar to a Federal forum, a conclusion directly at odds with the *Monroe* and *McNeese* decisions.

In sum, therefore, the Court of Appeals, which decided correctly in *Progress Development,* has now abandoned that position and adopted a view that brings it into conflict with this Court's pronouncements.

II.

The Decision of the Court of Appeals Is in Conflict With the Interpretation Accorded Section 601 of the Civil Rights Act by the Court of Appeals for the Fifth Circuit.

In *Bossier Parish School Board* v. *Lemon*, 370 F. 2d 847 (5th Cir. 1967), the Court of Appeals found, as an alternative basis for relief, that Section 601 of the Civil Rights Act of 1964 gave plaintiffs alleging discrimination under a federally-assisted school program standing to sue to enforce those rights in Federal courts. In that case, Negro military personnel stationed in the school district sued on behalf of their minor children to enjoin the operation of racially-segregated schools. In holding that Section 601 gave plaintiffs standing to maintain the action, Judge Wisdom stated:

> The defendants argue that this section is a mere statement of policy, and that section 602's administrative remedies are the only means by which it may be enforced. Section 601 states a reasonable condition that the United States may attach to any grant of financial assistance and may enforce by refusal or withdrawal of federal assistance. But it also states the law as laid down in hundreds of decisions, independent of the statute. In this sense, the section is a prohibition, not an admonition. In the absence of a procedure through which the individuals protected by Section 601's prohibition may assert their rights under it, violations of the law are cognizable by the courts. See *Texas & Pacific Ry.* v. *Rigsby*, 1916, 241 U. S. 33 . . .; *Steele* v. *Louisville & N. R. R.*, 1944, 323 U. S. 192 . . . The Bossier Parish School Board accepted federal financial assistance in November 1964, and thereby brought its school system within the class of programs subject to the section 601 prohibition against discrimination. The Negro school children, as beneficiaries of the Act, have standing to assert their section 601 rights.

The Court of Appeals appears to have found the *Bossier Parish* decision inapplicable. Since the relocation machinery established by the Central Englewood Conservation Plan does not *force* or *compel* displacees to relocate in the housing to be found for them, the Court reasoned that Petitioners could not claim they were being subjected to discrimination in violation of Section 601, even though the only housing to be offered would be in segregated areas.

The Federal Housing Act specifically requires a relocation plan to be developed by the local agency in all urban renewal programs. The Urban Renewal Manual published by the Urban Renewal Administration calls for elaborate documentation as proof of the feasibility of the relocation proposals. Section 601 now places a further requirement on the local agency that these relocation plans, developed and administered with Federal funds, shall not subject any person to discrimination. Even if the local agency were not under a legal obligation to provide a relocation program, it could not develop or implement one which will result in discrimination on account of race.

The Court of Appeals, by placing emphasis on the non-compulsory aspect of relocation, would apparently permit the most grossly discriminatory relocation program to stand. According to the Court's reasoning, *so long as no one is compelled to accept segregated relocation housing,* no one is discriminated against, even though he is offered such housing in accordance with a plan for relocating Negroes in Negro areas and whites in white areas. One could as readily say that a Federally-assisted public school system which engaged in segregation would not be in violation of Section 601 since the children were not forced or compelled to attend public schools. They could, if they wished, attend private schools.

Clearly, what the Court of Appeals has done is to vitiate Section 601's plain prohibition against discrimination. The evil Section 601 seeks to remedy is the evil of

discriminatory local programs which receive Federal financial assistance. A plan for relocating displacees from an urban renewal area in accordance with and in furtherance of a segregated housing pattern—if it is drawn up and implemented in any degree with Federal funds—violates Section 601. It will not do, as the Court of Appeals holds, to say that the individuals affected by this plan are free to accept or reject the relocation housing offered them, as they choose. The point is that—without contravening Section 601—*Federal funds cannot be used even to devise such a discriminatory plan.*

In so holding, the Court of Appeals has misinterpreted Section 601, and it has decided an important question arising under the Section in a manner quite inconsistent with the decision of the Court of Appeals for the Fifth Circuit in *Bossier Parish School Board* v. *Lemon.*

III.

This Case Raises Important Public Questions Concerning the Role of Federal and Local Officials in Fostering Racial Discrimination and Segregation Under the Guise of Urban Renewal.

Segregation in housing throughout the United States has compelled minority groups, principally Negro, to live in urban ghettos. It is precisely these areas which have been the focus of urban renewal programs. In the name of improving cities and of providing new housing, these programs have displaced over 500,000 persons,[6] the majority of whom were Negro. Four times as many dwelling units have been torn down as have been constructed.[7]

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6. Housing and Home Finance Agency Annual Report 1964, pp. 372, 396.

7. Greer, *Urban Renewal and American Cities 56* (1965).

Those displaced have suffered disruption of family and institutional life and financial sacrifice.[8]

Chicago has been characterized as the most residentially segregated large city in the nation.[9] Approximately 14,900 *families* have been displaced, of which four-fifths have been Negro.[10]

The selection of certain sites for urban renewal in Chicago and the type of redevelopment permitted have been influenced as much by racial considerations as by a concern for the physical conditions of areas or for the City's overall needs.[11] Much sound housing occupied by Negroes has been destroyed in some projects while poorer housing occupied by non-Negro residents has remained untouched. In one major conservation project nearly half of the structures razed were sound, with no code violations or only minor infractions. Eighty-five percent of those displaced, however, were Negroes.[12] In the Central Englewood plan, over eighty percent of the housing to be cleared meets Chicago's definition of "standard condition", but eighty-five percent of the persons to be displaced are Negro. Thus urban renewal has lent itself as a means of thinning out or carefully controlling Negro occupancy in certain areas or pushing back the expanding areas of Negro concentration. Without an effective program directed at relocation on a non-segregated basis, urban renewal in Chicago has more and more approximated "Negro removal."

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8. Schorr, *Slums* and *Social Insecurity* 55-73 (1963).

9. *With Liberty and Justice for All:* An abridgment of the Report of the U. S. Comm. on Civil Rights 146 (1959).

10. *Housing and Urban Renewal Progress Report,* City of Chicago, Dec. 31, 1965. *Relocation in Chicago,* Chicago Community Renewal Program 72 (April 1964).

11. Duncan and Hauser, *Housing a Metropolis—Chicago* 85-86 (1960), pp. 85-86. National Committee Against Discrimination in Housing, *How the Federal Government Builds Ghettos* 3, 7 (1967).

12. Hyde Park-Kenwood Urban Renewal Plan, Community Conservation Board of the City of Chicago, 1958.

The Federal mandate to abjure discriminatory practices is unequivocal. In 1962, an Executive Order barred discrimination in all federally-assisted housing programs. In 1963, the Urban Renewal Administration announced that it had the obligation to see that displaced families were assisted in finding housing accommodations free from racial restrictions.[13] This responsibility has never been effectively carried out. Local officials have never been required to assist families in finding housing accommodations free from racial restrictions. The Urban Renewal Administration has invariably approved relocation plans similar to the plan proposed for the Central Englewood project. Thus, it has acquiesced in and, in effect, encouraged segregation by sanctioning relocation of displaced persons by race.

CONCLUSION.

The decision of the Court of Appeals ignores the rulings of this Court that exhaustion of state remedies is not a prerequisite to seeking relief in a Federal Court when federally-created rights are asserted. Merely because an urban renewal program is the setting in which Civil Rights violations purportedly occur should not bar Petitioners' right to maintain this action.

The Court of Appeals seizes upon the non-compulsory aspect of the relocation provisions of the Housing Act to immunize local and federal officials from the prohibition of Section 601. This interpretation of Section 601 emasculates its stated purpose—to prohibit racial discrimination in "any program or activity receiving Federal financial assistance."

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13. The Urban Renewal Administrator stated that as of that date relocation regulations were revised to prohibit the listing of housing accommodations that are not available to all families regardless of race, color, creed or national origin. Statement by William L. Slayton, Commissioner, "News," Urban Renewal Administration, Housing and Home Finance Agency (June 25, 1963).

Racial segregation in American cities is increasing. One substantial cause is the impact of urban renewal programs which inevitably, and sometimes deliberately, destroy housing occupied by minority groups. Another significant cause is the practice of local and federal officials of relocating displaced Negroes in Negro areas only. The issues presented by this Petition are important because clear-cut questions of the application of the Civil Rights Acts to the policies and practices of Respondents are raised. It is Petitioners' contention that urban renewal—as the Respondents propose to carry it out in Central Englewood in Chicago—violates rights guaranteed to them by the Civil Rights Acts.

It is therefore urged that this Petition be granted.

Respectfully submitted,

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APPENDIX A.

OPINION OF COURT OF APPEALS.

JANUARY 25, 1967

Before CASTLE, SWYGERT, and CUMMINGS, *Circuit Judges.*

SWYGERT, *Circuit Judge.* This appeal is from a dismissal[1] of an action filed by the Green Street Association, a not-for-profit corporation organized to protect and promote the interests of residents of a section of Chicago known as the Central Englewood Area, and approximately 125 individual Negroes who are owners or lessees of property in this section of the city. The plaintiffs sought a judicial review of an urban renewal project covering the area.

The Central Englewood Area is part of a much larger section of Chicago which in 1956 was designated as the Englewood Conservation Area by the Chicago Community Conservation Board pursuant to the urban renewal statutes of Illinois. This section consists of more than 3,000 acres of land and has a population of approximately 140,000 people. A conservation plan for this area was adopted by the Chicago City Council in 1962. Subsequently, a number of redevelopment projects covering portions of the area were planned and approved. Among these is the Central Englewood Project, consisting of an area of approximately seventy-five acres. Within the

1. *Green Street Ass'n* v. *Daley*, 250 F. Supp. 139 (N.D. Ill. 1966).

Project area there are twenty-two acres of residential property and twenty-seven acres on which approximately 150 structures of a nonresidential character are located. The initial surveying and planning work of the Project was started in 1961 by the Chicago Community Conservation Board. The work was partially financed by the federal government pursuant to the provisions of 42 U. S. C. § 1452. Thereafter the Chicago Department of Urban Renewal, successor to the Community Conservation Board, prepared a redevelopment plan for the area pursuant to the provisions of the Illinois Urban Renewal Consolidation Act of 1961, Ill. Rev. Stat. ch. 67½, §§ 91.101-91.136 (1965), and in July 1964 the Chicago City Council passed an ordinance approving the plan, which calls for an expenditure of public funds in excess of thirteen million dollars. The Project was organized, planned, and presented pursuant to regulations prescribed by the Housing and Home Finance Agency under the federal urban renewal statutes, 42 U. S. C. §§ 1450-1465.

The Project will entail the construction and reconstruction of various streets, bypasses, and parking lots associated with and incident to the revitalization of a shopping center which services the entire Englewood area. This work will require the acquisition by eminent domain of approximately 300 buildings, consisting of about 600 dwelling units, eighty-five per cent of which are occupied by Negroes. Plaintiffs seek to enjoin the acquisitions and to have the Central Englewood Project declared invalid.

It is the theory of the complaint that the Central Englewood Project is not a good faith urban renewal, but rather a deliberate plan to create a no-Negro "buffer zone" between the shopping area and the surrounding residential community so that the shopping area will be

more attractive to white customers and thereby rescue the commercial trade and business of the area from a declining condition. The plaintiffs also contend that this urban renewal plan fails to satisfy constitutional requirements of due process and freedom from discrimination to which the plaintiffs are entitled, since it was approved by the Chicago City Council without an adequate hearing and because it proposes a relocation of the residents in the cleared area in accordance with segregated housing patterns prevalent in Chicago. In this appeal, the plaintiffs challenge the dismissal of three of the five counts contained in their original complaint.

Count I.

The plaintiffs in Count I invoke the jurisdiction of the federal courts under 28 U. S. C. § 1343, 42 U. S. C. § 1983, and section 601 of the Civil Rights Act of 1964, 42 U. S. C. § 2000d. They allege that approximately four-fifths of the housing to be cleared under the Central Englewood Project meets the city's definition of "standard" housing; that the parking facilities in the area are already excessive; that due to an increased concentration of Negro residents within the Englewood area the volume of business transacted in the shopping center has steadily declined; that a conspiracy exists to deprive the plaintiffs from owning or leasing property adjacent to the shopping center; and that the conspiracy started about 1953 among the "commercial interests" located in the center in order to create a no-Negro "buffer zone" between the shopping area and the surrounding residential community, thereby making the shopping area more attractive to white customers. The plaintiffs further allege that the City of Chicago, its mayor, the city's Department of Urban Renewal, and that department's executive officer "were induced" to join the conspiracy and that these defendants have "knowingly,

wilfully and under color of law" proposed to use their official powers, including the power of eminent domain, to accomplish the object of the conspiracy. The urban renewal project for the Central Englewood Area is alleged to have been planned and approved in furtherance of the conspiracy. Finally, it is alleged that unless enjoined, the defendants by reason of their conspiratorial conduct will deprive the plaintiffs of rights to own, lease, hold, and enjoy property in violation of section 1 of the Civil Rights Act of 1866, 42 U. S. C. § 1982.[2]

The district court in dismissing Count I relied heavily on this court's decision in *Harrison-Halsted Community Group, Inc.* v. *Housing & Home Fin. Agency,* 310 F. 2d 99 (7th Cir. 1962), *cert. denied,* 373 U. S. 914 (1963). The plaintiffs, in maintaining that this count states a claim for relief, place equal reliance on this court's decision in *Progress Dev. Corp.* v. *Mitchell,* 286 F. 2d 222 (7th Cir. 1961).

In *Harrison-Halsted* the plaintiffs, certain businessmen, property owners, and residents of a blighted area on Chicago's near west side, sought to enjoin various federal, state, and local government officials from proceeding with an urban renewal program. Jurisdiction to obtain judicial review of the program was based on two grounds, federal question jurisdiction under 28 U. S. C. § 1331, and jurisdiction to review federal agency action under section 10 of the Administrative Procedure Act, 5 U. S. C. § 1009. No claim under any of the Civil Rights Acts was asserted. Although the plan of urban renewal was attacked generally, the central contention of the plaintiffs was that their interests and those of the community would be

2. 42 U. S. C. § 1982 reads:

All citizens of the United States shall have the same right, in every State, and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

better served were the area redeveloped for residential and commercial use, as orginally planned, rather than for use as a university site, as later determined. We held that the plaintiffs had presented no substantial federal question and had no standing to sue because the acts complained of did not constitute an invasion of their private legal rights as distinguished from their position as members of the community and because neither the Housing Act of 1949 nor the Administrative Procedure Act conferred such private rights upon them.

In *Progress,* a real estate development corporation purchased land in the village of Deerfield, Illinois and announced that it planned to sell a portion of the houses to be constructed on the land to Negroes. The village officials, upon learning of the plan, took steps to condemn the land, allegedly for use as a park. The plaintiffs, the developer and its parent corporation, filed an action in the federal district court to enjoin the condemnation by the village and its park district and to recover damages from the individual officials on the ground that the corporations' civil rights were being violated. Jurisdiction was based on the provisions of various Civil Rights Acts, including 42 U. S. C. §§ 1983 and 1985. The district court dismissed the complaint. We reversed, holding that the complaint stated a "federal cause of action." We ruled that the plaintiffs were entitled to relief if it could be shown that the sole purpose of the village and its officials in instituting the condemnation proceeding was to conspire to deny the plaintiffs equal protection of the laws as alleged in the complaint.

Thus, at least insofar as jurisdictional allegations are concerned, *Harrison-Halsted* is inapplicable to Count I in the instant case, and at first blush it appears that the claim of civil rights violations asserted by the plaintiffs in this count is controlled by *Progress.* There are,

however, significant differences both from the standpoint of the facts alleged and in terms of the practical and efficient administration of urban renewal programs generally which make the holding in *Progress* inapposite here and require that the dismissal of Count I be affirmed.

In *Progress* the municipal officials moved to take the plaintiffs' property by exercising the power of eminent domain immediately after the plaintiffs' announcement that Negroes would have the opportunity to purchase homes in the subdivision to be developed. The complaint alleged that the Deerfield officials in so doing were not acting in furtherance of any public purpose, but solely to acquire the property in violation of the plaintiffs' right to do business. These particular allegations prompted consideration of the complaint as essentially involving civil rights rather than as raising specific questions relating to eminent domain. Eminent domain was relevant there only to the extent that the exercise of the power per se might prove to be an abuse of that power causing a denial of equal protection guaranteed by the Civil Rights Acts and the Constitution.

In the case at bar the Central Englewood Project is an integral part of a large conservation and urban renewal program undertaken by the City of Chicago. Presumptively, at least, the land to be acquired will aid the redevelopment of a shopping center for the entire area and will be used for the construction of streets, bypasses, a pedestrian arcade and mall, and parking lots. The plaintiffs do not challenge the exercise of the eminent domain power per se; instead, they challenge the power to condemn only as it manifests itself in the details of a particular plan of urban renewal. Thus, for example, although the plaintiffs assert that the parking facilities provided in the plan are excessive and that no revitalization of the area covered by this portion

of the plan is necessary, they make no claim that the acquired land will be devoted to anything other than a public use. Nor do they claim that the project was designed solely to deprive them of their rights to own and occupy the dwellings to be cleared. The plaintiffs challenge only the motives for fashioning the plan in the specific manner in which it was accomplished. Therefore, the exceptional circumstances in the *Progress* case, the significant sequence of events and factual allegations, are not present and the instant case is more properly considered as an attempt to obtain federal judicial review of a program of urban renewal prior to the exercise of the power of eminent domain.

When Count I is viewed as involving the power of eminent domain in this manner, the allegations assume a different cast. It is commonplace to recall that the power of eminent domain is an attribute of sovereignty. "The taking of private property for public use upon just compensation is so often necessary for the proper performance of governmental functions that the power is deemed essential to the life of the State." *Georgia* v. *City of Chattanooga,* 264 U. S. 472, 480 (1924). Every person who acquires or occupies land does so at the risk of being evicted by the exercise of the superior right of the state or its delegate to acquire his interest upon payment of just compensation. The power of eminent domain is legislative in character. Given a public purpose or use, the motives that underlie the exercise of that power may not be questioned. *Atlantic Coast Line R. R.* v. *Town of Sebring,* 12 F. 2d 679 (5th Cir. 1926); *City of Chicago* v. *R. Zwick Co.,* 27 Ill. 2d 128, 188 N. E. 2d 489, *appeal dismissed,* 373 U. S. 542 (1963). Although the actual purpose for which land is condemned may be investigated, the subjective reasons of the legislative authority seeking the acquisition is an "inappropriate area

for judicial inquiry." *Deerfield Park Dist.* v. *Progress Dev. Corp.*, 22 Ill. 2d 132, 140, 174 N. E. 2d 850 (1961). Since the plaintiffs do not allege in Count I either that the land is not being taken for a public purpose or that the land is being taken solely to deprive the plaintiffs of rights secured to them by the equal protection clause, they have not stated a claim within the area made accessible by *Progress Dev. Corp.* v. *Mitchell, supra.*

Further, in nearly all cases the question of whether the land to be acquired will be devoted to a public purpose is more appropriate for the state court to make in the condemnation proceedings. *Zurn* v. *City of Chicago*, 389 Ill. 114, 59 N. E. 2d 18 (1945). The plaintiffs' claim that a portion of the urban renewal project is merely a sham or ruse to accomplish Negro clearance can be encompassed within the issues there, at least insofar as it relates to the actual purpose of the taking, as distinct from the motives that may have actuated the legislative body. It must be assumed that the state court will protect the plaintiffs' federal constitutional rights. "The state courts are as firmly bound by the Constitution of the United States as is this [federal] court and [the proper] forum for the enforcement of any constitutional rights that may have been violated is in the . . . state courts with the right of ultimate determination in the Supreme Court of the United States." *Baber* v. *Texas Util. Co.*, 228 F. 2d 665, 666 (5th Cir. 1956). This principle has been applied in a number of other cases concerning the power of eminent domain. *Georgia* v. *City of Chattanooga, supra; National Quarries Co.* v. *Detroit, T. & I. R. R.*, 10 F. 2d 139 (6th Cir. 1926); *Carver Progressive Club* v. *Miriana*, 192 F. Supp. 825 (E. D. Mich. 1960), *aff'd per curiam*, 288 F. 2d 889 (6th Cir.), *cert. denied*, 368 U. S. 818 (1961); *Hoffman* v. *Stevens*, 177 F. Supp. 898 (M. D. Pa. 1959). *Accord, Harrison-Halsted Community Group, Inc.* v. *Housing & Home Fin. Agency, supra.*

In summary, therefore, cases presenting challenges to urban renewal programs are matters for the condemnation proceedings in the state courts if the taking is ostensibly for a public purpose, even though violations of federally guaranteed rights are claimed. Only in those exceptional cases like *Progress*, where the facts alleged indicate to all outward appearances that the taking is designed solely to deny constitutional rights, is the power of eminent domain subject to the prior scrutiny of the federal courts. We hold that the district court was correct in dismissing Count I.

Count II.

Count II names both the local and the federal defendants. It alleges that at the public hearing on the Central Englewood Project, conducted by a committee of the Chicago City Council, the plaintiffs were limited to reading a prepared statement, that they were harassed and intimidated, and that they were denied the opportunity to cross-examine the defendants and the witnesses supporting the Project. Count II also alleges that the public notice required for the hearing was defective and that the committee's conclusions were dictated in advance by certain defendants or persons unknown. For these reasons it is asserted that the hearing did not conform to the requirements of section 105(d) of the Housing Act of 1949, 42 U. S. C. § 1455(d),[3] and denied the plaintiffs due process. The plaintiffs seek to enjoin all defendants from proceeding to carry out the Project until a "full and fair public hearing on it has been held in compliance with law. . . ." For jurisdictional pur-

3. 42 U. S. C. § 1455(d) reads:

No land for any project to be assisted under this subchapter shall be acquired by the local public agency except after public hearing following notice of the date, time, place, and purpose of such hearing.

poses, they rely on 28 U. S. C. § 1331 and section 10 of the Administrative Procedure Act, 5 U. S. C. § 1009.

In *Harrison-Halsted Community Group, Inc.* v. *Housing & Home Fin. Agency, supra,* similar claims of the inadequacy of a hearing were made, supported by the same jurisdictional allegations. As has already been stated, we held there that neither section 105(d) of the Housing Act nor section 10 of the Administrative Procedure Act provides the basis for a federal right to judicial review of an urban renewal plan. We see no reason to reexamine our position in that case. Moreover, no substantial federal question of due process is raised. *Rindge Co.* v. *Los Angeles,* 262 U. S. 700, 709 (1923); *Combs* v. *Illinois State Toll Highway Comm.,* 128 F. Supp. 305 (N. D. Ill. 1955). The district court properly dismissed Count II.

Count IV.

Count IV names both the local and the federal defendants. In it the plaintiffs allege that the relocation provisions of the Urban Renewal Plan for the Central Englewood area are deficient in two respects. First, they allege that the relocation provisions are not "feasible" as required by section 105(c) of the Housing Act of 1949, 42 U. S. C. § 1455(c), in that persons displaced from the Project area will be forced to move into housing which is not "decent, safe, and sanitary" or will be forced to pay more for housing than they are presently paying. Second, they allege that "the existence of a segregated residential pattern in the City of Chicago is expressly acknowledged in the Urban Renewal Plan . . . wherein separate relocation facilities based on race, for persons to be displaced from the project area, are given," thus rendering the Plan violative of

section 601 of the Civil Rights Act of 1964, 42 U. S. C. § 2000d.[4] The plaintiffs allege that in approving the Plan despite these provisions the local and federal defendants are acting in violation of the plaintiffs' rights to equal protection of the laws. The plaintiffs request a declaration that the Plan is invalid and seek to enjoin all defendants from proceeding with it "until an adequate, realistic, and feasible method of relocation is devised in accordance with law."

The plaintiffs' renewed attack on the Plan in terms of the Housing Act of 1949 is again subject to the rule stated in the *Harrison-Halsted* case, discussed earlier. The plaintiffs have no standing to litigate questions arising from alleged violations of the act.[5]

The plaintiffs' remaining contention with respect to Count IV is that the Plan's "recognition" of the segregated nature of residential facilities in Chicago subjects them to "discrimination under [a] program . . . receiving Federal financial assistance" within the meaning of section 601 of the Civil Rights Act of 1964 and that this section implicitly confers standing upon them to sue to enjoin violations of it. As to the federal defendants, the plaintiffs' argument is erroneous in that it ignores the remaining sections of Title VI of the act. Sections

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4. 42 U. S. C. § 2000d reads:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

5. Nor do we think that section 601 of the Civil Rights Act of 1964 confers standing upon the plaintiffs to raise questions concerning the Plan's compliance with the provisions of the Housing Act of 1949.

602 and 603 of the act, 42 U. S. C. §§ 2000d-1,[6] 2000d-2,[7] established the procedure to be followed by federal officials in enforcing the nondiscrimination requirements of sec-

6. 42 U. S. C. § 2000d-1 reads:

Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 2000d of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: *Provided, however,* That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

7. 42 U. S. C. § 2000d-2 reads:

Any department or agency action taken pursuant to section 2000d-1 of this title shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review—terminating or refusing to grant or to continue financial assistance upon a

tion 601. Only after the appropriate federal agency has followed this procedure is judicial review permitted by section 603. If an individual suit for an injunction against the federal officials were permitted, the administrative procedure would be bypassed. We do not think that section 601 was intended to permit the termination of federal participation in a given program by this means.

As to the local defendants, the plaintiffs argue that *Lemon* v. *Bossier Parish School Bd.*, 240 F. Supp. 709 (W. D. La. 1965), *aff'd,* No. 22675, 5th Cir., January 5, 1967, holds that individuals being subjected to discrimination under a program receiving assistance have standing to sue local officials for relief under section 601. In *Lemon* it was held that a local school board, having received federal funds, could be compelled to refrain from discrimination by means of a suit brought by private persons under this section. But even assuming, *arguendo,* the merits of that decision, in our view Count IV of the plaintiffs' complaint in this case was properly dismissed for failure to state a claim upon which relief can be granted. The complaint alleges, in various terms, that the relocation facilities proposed in the Urban Renewal Plan "recognize" or "acknowledge" the segregated residential pattern existing in Chicago.[8] It does not, and realistically cannot, allege that the relocation machinery established by the Plan forces or compels displacees from the Project to relocate in segregated areas of the city. The existing "segregated" residential pattern is accidental to the plan. The city admittedly could not require relocation

finding of failure to comply with any requirement imposed pursuant to section 2000d-1 of this title, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with section 1009 of Title 5, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that section.

in any particular area; it may only determine what housing is available in fact and offer whatever assistance it can in furnishing this information to displacees. The local defendants may not be enjoined from proceeding with the Plan simply because the Plan fails to include what the local defendants would be powerless to enforce—"integrated" relocation. Count IV was properly dismissed.

The judgment of the district court is affirmed.

APPENDIX B.

STATUTORY PROVISIONS INVOLVED.

42 U. S. C. Sec. 1982, 1983:

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Civil Rights Act of 1964, Sec. 601 (42 U. S. C. Sec. 2000(d)):

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Housing Act of 1949, Section 105(c), as amended (42 U. S. C. 1455(c)):

Contracts for loans or capital grants shall be made only with a duly authorized local public agency and shall require that—

(c)(1) There shall be a feasible method for the temporary

relocation of individuals and families displaced from the urban renewal area, and there are or are being provided, in the urban renewal area or in other areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the individuals and families displaced from the urban renewal area, decent, safe, and sanitary dwellings equal in number to the number of and available to such displaced individuals and families and reasonably accessible to their places of employment. The Administrator shall issue rules and regulations to aid in implementing the requirements of this subsection and in otherwise achieving the objectives of this subchapter. Such rules and regulations shall require that there be established, at the earliest practicable time, for each urban renewal project involving the displacement of individuals, families, and business concerns occupying property in the urban renewal area, a relocation assistance program, which shall include such measures, facilities, and services as may be necessary or appropriate in order: (A) to determine the needs of such individuals, families, and business concerns for relocation and assistance; (B) to provide information and assistance to aid in relocation and otherwise minimize the hardships of displacement, including information as to real estate agencies, brokers, and boards in or near the urban renewal area which deal in residential or business property that might be appropriate for the relocating of displaced individuals, families, and business concerns; and (C) to assure the necessary coordination of relocation activities with other project activities and other planned or proposed governmental actions in the community which may affect the carrying out of the relocation program, particularly planned or proposed low-rent housing projects to be constructed in or near the urban renewal area.

(2) As a condition to further assistance after August 10, 1965 with respect to each urban renewal project involving the displacement of individuals and families, the Administrator shall require, within a reasonable time prior to actual displacement, satisfactory assurance by the local public agency that decent, safe, and sanitary dwellings as required by the first sentence of this subsection are available for the relocation of each such individual or family.